

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

May 4, 2022 at 2:00 p.m.

1. 10-27435-E-7 THOMAS GASSNER 19-2006 HUSTED V. MEPCO LABEL SYSTEMS ET AL	CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT 6-3-20 [98]
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Plaintiff's Atty: J. Russell Cunningham; Kristen Ditlevsen

Defendant's Atty:

Charles L. Hastings [Laura Strombom]

Scott G. Beattie [Carol L. Gassner; Alfred M. Gassner; Mepco Label Systems]

Adv. Filed: 1/7/19

Answer:

2/5/19 [Alfred M. Gassner; Carol L. Gassner; Mepco Label Systems]

2/5/19 [Laura Strombom]

1st Amd Cmplt Filed: 6/3/20

Answer:

6/17/20 [Laura Strombom]

6/19/20 [Alfred M. Gassner; Carol L. Gassner; Mepco Label Systems]

Counterclaim of Alfred M. Gassner; Carol L. Gassner; Mepco Label Systems filed 6/19/20

Answer: 7/9/20

Nature of Action:

Recovery of money/property - turnover of property

Notes:

Continued from 11/10/21, the court having extended the discovery and related deadlines pursuant to the joint motion of the Parties.

Defendant's Status Conference Statement filed 1/3/22 [Dckt 186]

[DNL-9] Motion to Approve Stipulation Re: Turnover of Stock filed 1/4/22 [Dckt 188]; Order granting filed 2/14/22 [Dckt 200]

The Pre-Trial Conference is XXXXXXX

MAY 4, 2022 PRETRIAL CONFERENCE

Through the “trials and tribulations” of prosecuting an adversary proceeding during COVID limitations, the Parties and their counsel have worked to move this litigation forward. On February 14, 2022, the court entered an order, pursuant to the Stipulation of the Parties, for: (1) the 2,000 shares of MEPCO stock be turned over the Plaintiff-Trustee, (2) authorizing the Plaintiff-Trustee to market and sell the shares of stock, and (3) the Plaintiff-Trustee to hold all proceeds from the sale of the shares of stock and not to disburse such without further order of the court. Order, Stipulation; Dckts. 200, 191. A review of the court’s docket for the Gassner Chapter 7 Case, 10-27435, does not show the court entering an order authorizing the sale of the shares of stock.

As the court has addressed, and has under submission the ruling on the order to show cause re: core and non-core matters in this Adversary Proceeding, this Adversary Proceed is rich with core matter claims and sufficiently arguable non-core claims that a portion of this Adversary Proceeding would need to be conducted in the District Court and a portion conducted in the Bankruptcy Court.

At the heart of this Adversary Proceeding are issues including, but not limited to, what was the late Debtor’s interest in the 2000 shares of MEPCO stock, what the effect of his not disclosing the shares of stock in his bankruptcy case and the effect of such nondisclosure leaving such interests in the bankruptcy estate protected by the automatic stay even after the Chapter 7 bankruptcy case was closed, and the rights of the settlors of the trust which held the MEPCO shares to modify the terms of the trust after the Debtor reached the specified age of fifty (50) years old in the trust document.

The late Debtor has left one child, the grandchild of the settlors, and his wife, the settlors daughter in law.

At the Pretrial Conference, **XXXXXXX**

JULY 1, 2020 STATUS CONFERENCE

The Parties to this Adversary Proceeding have presented the court with a factual and legal issue rich set of matters to address. This Adversary Proceeding has afforded the Parties the opportunity to address all of these issues, claims, and rights involving what is asserted to be property of the bankruptcy estate to this court.

Plaintiff-Trustee has her First Amended Complaint (Dckt. 98) seeking the turnover share of stock in MEPCO Label Systems (“MEPCO”) from Laura Strombom, trustee of the Gassner Trust (“Strombom”) asserted to property of the bankruptcy estate, which is a core proceeding, in the First Cause of Action.

The Second Cause of Action is for the dissolution of MEPCO based on the asserted ownership of the stock in that corporation, which is a related to, non-core, proceeding.

The Third Cause of Action is an objection to the claim of Carol and Alfred Gassner; and the Fourth Cause of Action is an Objection to the Claim of MEPCO, both of which are core matters. It appears that the

Plaintiff-Trustee consents to the bankruptcy judge issuing all orders and final judgment on the non-core matter Second Cause of Action.

Defendant Strombom has filed her Answer to the Amended Complaint. Answer, Dckt. 102, admitting and denying specific allegations in the First Amended Complaint.

Defendant Strombom does not clearly consent to or not consent to the bankruptcy judge issuing final orders and judgment for the non-core matter claim, to the extent that she is a party in interest for that Cause of Action.

Defendants MEPCO, Carol Gassner, and Alfred Gassner have filed their Answer, Dckt. 103, which admits and denies specific allegations in the Complaint. In the Answer it is asserted that determining whether the MEPCO stock is property of the bankruptcy estate is a related proceeding and that these Defendants do not consent to the bankruptcy judge issuing final orders and judgment in determining what is property of the bankruptcy estate pursuant to 11 U.S.C. § 541 pursuant to the exclusive federal jurisdiction granted by Congress in 28 U.S.C. § 1334(e) for property of the bankruptcy estate.

For the Second Cause of Action, the involuntary dissolution of MEPCO, it is asserted that such is beyond the “related to” grant of federal court jurisdiction.

In Paragraph 5 of the Answer, these Defendants state:

The answering defendants do not consent to entry of final orders or judgment by the Bankruptcy Court. Donors are the Founders of MEPCO who formed the corporation on September 23, 1975 (under the name of Mark-Ease Products, later known as MEPCO LABEL SYSTEMS).

Answer, p. 3; Dckt. 103.

This statement appears to read as these Defendants stating that they do not consent to the issuance of final orders and judgment by the bankruptcy judge on both core and non-core matters. Consent is required only for non-core matters for the bankruptcy judge to issue final orders and judgment. The bankruptcy judge issues the final orders and judgment on all core matter proceedings, 28 U.S.C. § 157(b), with no consent of a party required. It is only for the non-core proceedings in which consent is required. 11 U.S.C. § 157(c). If non-core, the trial is handled in a similar recommendation to the district court as when a magistrate judge hears a matter but not all of the parties consent.

MEPCO, Carol Gassner, and Alfred Gassner have filed a Counterclaim asserting rights and interests in the MEPCO stock and that it is not property of the bankruptcy estate. The claims and rights they assert includes the right to reform the trust documents by which the Plaintiff-Trustee asserts that the MEPCO stock is property of the bankruptcy estate. Defendants MEPCO, Carol Gassner, and Alfred Gassner (“Defendants MEPCO/Gassner”) admit that the First Cause of Action for Turnover and the Third and Fourth Causes of Action for Objection to Claim are core matter proceedings, that the Second Cause of Action for Involuntary Dissolution is non-core, and that adjudication of the respective rights and interests in the property at issue, for which the Cross Complaint asserts the right to reform the Thomas Gassner Trust is non-core, and for the non-core proceeding matters assert their right to have the Article III district court judge issue the final orders and judgment upon *de novo* review of proposed findings and conclusions by the bankruptcy judge (28 U.S.C. § 157(c)). Answer p. 3:1-27, 4:1-3 (no page no. 2 included with Answer) and

as stated on the record at the July 1, 2020 Status Conference.

Defendant Strombom admits that the Amended Complaint in its entirety is a core proceeding. Answer, ¶ 3; Dckt. 102.

Defendants MEPCO/Gassner have filed a Counterclaim with the following stated Counts:

Count 1: Reformation or Modification of the Thomas Gassner Trust.

Count 2: Partial Recession of the transfer of the stock into the Thomas Gassner Trust.

Count 3: Breach of Contract Claim Against Debtor for the period through June 2010, with Debtor having filed his Chapter 7 bankruptcy case on March 25, 2020.

Count 4: Promissory Estoppel (Debtor not fulfilling his promises)

Count 5: Money Had and Received (monies paid to Debtor by MEPCO within four years prior to the commencement of the bankruptcy case)

Count 6: Fraud (by Debtor)

Count 7: Conversion (by Debtor)

Count 8: Conversion of Proprietary Information (by Debtor)

MEPCO/Gassner assert that Counts 1 through 6 are non-core proceedings, and that MEPCO/Gassner do not consent to the entry of final orders and judgment thereon by the bankruptcy judge.

At the hearing the court addressed with all the Parties the issue of core matter jurisdiction, related to jurisdiction, the determination of core matter proceedings issuance of the final judgment thereon by the bankruptcy judge, as well as the procedure for non-core, related to matters heard by the bankruptcy judge and the recommendations to the district court judge.

Plaintiff-Trustee Status Conference Statement

Plaintiff-Trustee Kimberly Husted filed her Status Conference Statement on June 3, 2020. Dckt. 98. The Statement repeats much of what is stated in the Complaint.

Defendants MEPCO, Carol Gassner, and Alfred Gassner Status Conference Statement

These three Defendants filed their Status Conference Statement on June 26, 2020. Dckt. 123. In their Statement, these Defendants address the providing of initial disclosures and that discovery is “underway.”

With respect to the related proceeding brought by the successor in interest to the Debtor, Thomas Gassner, asserting violations of the automatic stay for both the Debtor and the bankruptcy estate (having been assigned those rights by the bankruptcy trustee), Defendants focus on the conduct of Debtor Thomas Gassner and note the age of the individual defendants mitigates in proceeding with both the related proceeding and this Adversary Proceeding at the same time.

2. [21-23778-E-7](#) CAREN SPAULDING
[22-2006](#) CAE-1
RICHARDS V. SPAULDING ET AL

STATUS CONFERENCE RE:
COMPLAINT
1-25-22 [1]

Plaintiff's Atty: J. Russell Cunningham
Defendant's Atty: Jeffrey S. Ogilvie

Adv. Filed: 1/25/22
Reissued Summons: 1/25/22
Answer: 2/18/22

Nature of Action:
Recovery of money/property - fraudulent transfer

Notes:
Joint Status Report & Discovery Plan filed 3/15/22 [Dckt 16]

The Status Conference is XXXXXXX
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SUMMARY OF COMPLAINT

The Complaint filed by Geoffrey Richards ("Plaintiff-Trustee"), Dckt. 1, asserts claims for avoidance and recovery of an asserted fraudulent conveyance transfer. It is alleged that on November 4, 2020, Debtor transferred to Defendant by an Interspousal Transfer Grant Deed the Debtor's interest in the Yreka, California Real Property (the "Property"). It is alleged that the transfer of the interest was without consideration. Then on the same day Defendant transferred title to the Property to himself for the benefit of a Trust.

On November 2, 2021, eleven months and twenty-nine days after the transfer, the bankruptcy debtor Caren Spaulding filed her Chapter 7 bankruptcy case.

SUMMARY OF ANSWER

Defendant Thomas Spaulding, named individually and as trustee for the Spaulding Family Living Trust (collectively referenced as "Defendant") filed and admitting and denying specific allegations in the Complaint. Answer, Dckt. 14.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee Geoffrey Richards alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F), (H). Complaint ¶¶ 2,4, 5, Dckt. 1. In the Answer, Defendant Thomas Spaulding, individually and as trustee of the Spaulding Family Trustee, admit the allegations of jurisdiction and that this is a core proceeding, but denies that it is a core matter for an “non-bankruptcy causes of action,” Answer ¶¶ 2, 4, 5 Dckt. 14. Further that Defendant “does not consent to the entry of final orders by the bankruptcy court on non-bankruptcy causes of action.” *Id.*, ¶ 5.

At the Status Conference, Defendant’s counsel clarified on the record what is meant by the phrase “non-bankruptcy causes of action, stating, **XXXXXXX**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. Plaintiff-Trustee Geoffrey Richards alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F), (H). Complaint ¶¶ 2,4, 5, Dckt. 1. In the Answer, Defendant Thomas Spaulding, individually and as trustee of the Spaulding Family Trustee, admit the allegations of jurisdiction and that this is a core proceeding, but denies that it is a core matter for an “non-bankruptcy causes of action,” Answer ¶¶ 2, 4, 5 Dckt. 14. Further that Defendant “does not consent to the entry of final orders by the bankruptcy court on non-bankruptcy causes of action.” *Id.*, ¶ 5.

At the Status Conference, Defendant’s counsel clarified on the record what is meant by the phrase “non-bankruptcy causes of action, stating, **XXXXXXX**

- b. Initial Disclosures shall have been made on or before **April 1, 2022**, and supplemental disclosures as permitted by Federal Rule of Civil Procedure 26(e) and Federal Rule of Bankruptcy Procedure 7026.
- c. Expert Witnesses shall be disclosed on or before **XXXXXXX**, 2022, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **XXXXXXX**, 2022.
- d. Expert Witnesses discovery opens **August 1, 2022**, and closes, including the hearing of any discovery motions relating thereto, closes **September 30, 2022**.
- e. Non-Expert Witness Discovery closes, including the hearing of all discovery motions, on **July 31, 2022**.
- f. Dispositive Motions shall be heard before **November 17, 2022**.
- g. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **11:00 a.m. on December 8, 2022** (Specially Set Day and Time due to court calendar

limitations).

3. [10-90281](#)-E-7 **LORRAINE/GARY ERWIN** **CONTINUED STATUS CONFERENCE**
21-9005 CAE-1 **RE: COMPLAINT**
ERWIN ET AL V. U.S. BANK, **5-24-21 [1]**
NATIONAL ASSOCIATION ET AL

Plaintiff's Atty: Darren Marcus Salvin
Defendant's Atty: unknown

Adv. Filed: 5/24/21
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Notes:
Continued from 2/9/22

The Status Conference is xxxxxxx
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MAY 4, 2022 STATUS CONFERENCE

No Updated Status Report has been filed by Plaintiff-Debtor Lorraine and Gary Erwin. Since the November 19, 2021 Order on Motion for Entry of Default Judgment and the Civil Minutes stating the court ruling, nothing further has been filed but five (5) Certificates of Service of Subpoena for:

1. Subpoena to Produce Documents serve on U.S. Bank, N.A., c/o Thurlin Roberts at a Cincinnati, Ohio address for U.S. Bank National Association. Dckt. 45.
2. Subpoena to Produce Documents serve on Ocwen Financial Corporation, via registered agent, at a Tallahassee, Florida address for a service company. Dckt. 46.
3. Subpoena for 2004 Examination Production of Documents of U.S. Bank, N.A.; Dckt. 47.
4. Subpoena for 2004 Examination Oral Deposition of U.S. Bank, N.A.; Dckt. 48.
5. Subpoena for 2004 Examination Production of Documents of Ocwen Financial Corporation; Dckt. 49.

At the Status Conference, **XXXXXXX**

FEBRUARY 9, 2022, STATUS CONFERENCE

The Civil Minutes stating the findings of fact and conclusions of from the court's denial of Plaintiff's Motion for Entry of Default Judgement was filed on November 18, 2021. Dckt. 43. The Status Conference was continued to February 9, 2022, in light of some of the unique discovery to be conducted.

At the Status Conference, Plaintiff-Debtor reported that a 2004 Examination of Defendant, as well as Ocwen Financial is planned. Additionally, Ocwen is investigation further and if documents can be located, Ocwen will document the release of the lien.

Counsel for Plaintiff also addressed documenting the public record of the lien, the beneficiary of the lien, and the reliance thereon in obtaining a judgment in this Adversary Proceeding if such judgment is necessary to clear title to the Property.

SUMMARY OF COMPLAINT

The Complaint filed by Lorraine and Gary Irwin ("Plaintiff-Debtor"), Dckt. 1, asserts claims to quiet title based on Adverse Possession of the real property commonly known as for 1320 Oak Leaf Circle, Oakdale, California. The liens which are the subject of this quiet title action are liens for loans obtained by Plaintiff-Debtor.

The Certificates of Service state the following persons have been served by mail:

Saxon Mortgage Services, Inc.
4700 Mercantile Dr.
Fort Worth, Texas 76137

Dckt. 6.

Personal service on U.S. Bank, N.A. by serving its registered agent:

Gabriela Sanchez
CT Corporation
818 W. 7th Street, Suite 930
Los Angeles, CA 90017

Dckt. 7.

Service by U.S. Mail on U.S. Bank, N.A., upon receiving notice from CT Corporation that it was not the agent for service of process for the Bank:

U.S. Bank, National Association
425 Walnut Street, Floor 14
Cincinnati, OH 45202

The Federal Rules of Bankruptcy Procedure, Rule 7004, provides for service on federally insured financial institutions and corporations as follows:

(b) Service by first class mail. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

...

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant

...

(h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

As stated Plaintiff-Debtor, the California Secretary of State reports that Saxon Mortgage Services, Inc. has surrendered its corporate status in California. ^{FN.1.}

For U.S. Bank, National Association, the FDIC website lists its main office address as 425 Walnut Street, Cincinnati, OH 45202. ^{FN.2.} That is the address used by Plaintiff-Debtor, but it is not addressed to an officer or “Attn: Officer for Service of Process.”

FN. 1. <https://businesssearch.sos.ca.gov/CBS/Detail>

FN. 2.

<https://banks.data.fdic.gov/bankfind-suite/bankfind?activeStatus=0%20OR%201&branchOffices=true&name=U.S.%20BANK%20NATIONAL%20ASSOCIATION&pageNumber=1&resultLimit=25>

At the Status Conference, counsel for Plaintiff-Debtor reports that proof of serve on US Bank, N.A. has been documented and that Plaintiff-Debtor will proceed with having the default entered and motion for entry of default judgment filed and set for hearing.

FINAL RULINGS

4. [22-20108-E-11](#) KAMCARE, LLC
[CAE-1](#)

CONTINUED STATUS CONFERENCE
RE: VOLUNTARY PETITION
1-18-22 [1]

Final Ruling: No appearance at the May 4, 2022 Status Conference is required.

Debtor's Atty: Gabriel E. Liberman

Notes:
Continued from 3/9/22

Operating Report Filed: 4/5/22

3/16/22 - filed: Amended Petition, Amended Statement of Financial Affairs, Amended Disclosure of Attorney Compensation

[ELP-1] Motion for Relief from Automatic Stay; granted at 4/28/22 hearing

The Chapter 11 Status Conference is continued to 11:00 a.m. on July 28, 2022 .
(Specially Set Day and Time due to court status conference calendaring limitations.)

MAY 4, 2022 STATUS CONFERENCE

This bankruptcy case was filed on January 18, 2022. The February 2022 Monthly Operating Report was filed on April 5, 2022 (approximately three weeks late). No Monthly Operating Report has been filed for March 2022, which was due to be filed by April 14, 2022. L.B.R. 2015-1(c).

The Monthly Operating Report for February 2022 provides the following financial information about the Debtor in Possession and operation of the Bankruptcy Estate:

- A. Full Time Employees, Current.....None
- B. Full Time Employees, as of filing Bankruptcy.....None
- C. Cash Receipts and Disbursements
 - 1. Cash Balance 2/1/2022.....\$ 83

2.	Receipts for 2/2022.....	\$400
3.	Disbursements for 2/2022.....	(\$483)
4.	Cash Balance 2/28/2022.....	\$ 0.00
D. Assets		
1.	Total.....	\$778,023
E. Income		
1.	Gross Income/Sales for 2/2022.....	\$ 0.00
2.	Cost of Goods Sold for 2/2022.....	\$ 0.00
3.	Gross Profit for 2/2022.....	\$ 0.00
4.	General Administrative Expenses for 2/2022.....	(\$286)
5.	Other Expenses for 2/2022.....	(\$ 16)
6.	Profit/(Loss) for 2/2022.....	(\$233)

On the last page there is information for “Additional Cash Received.” For February 2022 for line items with the abbreviations “H&P” and “A” there nine entries totaling \$985.00. Then, as part of the February 2022 Report, there is also information under the hearing KIP Account Open 03/02/2022 (indicating that the Debtor in Possession did not open the required debtor in possession account until two months after the case was filed, though apparently receiving income for the bankruptcy estate.

As reflected in the Civil Minutes from the hearing on the Motion for Relief From the Automatic Stay in this case (and as stated at the hearing), the Debtor in Possession and its Responsible Representative, as fiduciaries of the bankruptcy estate, have a lot of work to do before the automatic stay is terminated and a creditor allowed to foreclosure on the real property which Debtor stating having an interest in worth \$752,000. Schedule A/B, ¶ 55. They have a lot to do working with their bankruptcy counsel and other family members who live in the real property in which the Debtor has a 30% Absolute Interest (but is having to pay rent to “use” while family members, who are members of the Debtor LLC, I’ve there).

The hearing on the Motion for Relief From the Stay was sufficient for a Status Conference for this case in which there are only two identified creditors – the creditor obtaining relief from the stay and the Internal Revenue Service who is asserted to have a claim in an amount less than \$15,000 for penalties due to Debtor failing to file its informational returns timely.

The court continues the Status Conference to allow the Debtor in Possession, the Responsible Representative of the Debtor in Possession (the managing member), and counsel for the Debtor in Possession to spend time focused on trying to comply with the Bankruptcy Code and the Debtor in Possession prosecute this case, rather than being detoured by a short “meet and greet, oh yeah, we talked about that” status conference.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Status Conference in this Chapter 11 Case having been scheduled in this Case, the Court having conducted the equivalent of a Status Conference as part of the April 28, 2022 hearing on the Motion for Relief From Stay, and good cause appearing,

IT IS ORDERED that the Chapter 11 Status Conference is continued to **11:00 a.m. on July 28, 2022** . (Specially Set Day and Time due to court status conference calendaring limitations.)

5. [14-24616-E-13](#) [21-2012](#) NICOLE GOLDEN/STEPHEN
ALTER CAE-1

**GOLDEN ET AL V. UNITED STATES
OF AMERICA (INTERNAL REVENUE**

**CONTINUED PRE-TRIAL
CONFERENCE RE: COMPLAINT FOR
DETERMINING DISCHARGEABILITY
AND VOIDING LIEN
2-8-21 [\[1\]](#)**

Final Ruling: No appearance at the May 4, 2022 Pre-Trial Conference is required.

Plaintiff's Atty: John G. Downing
Defendant's Atty: Ty Halasz

Adv. Filed: 2/8/21
Answer: 3/15/21

Nature of Action:
Validity, priority or extent of lien or other interest in property
Dischargeability - other
Declaratory judgment

Notes:
Continued from 4/7/22

[JGD-10 & IRS] Joint Memorandum Opinion and Decision Granting Plaintiff-Debtor's Countermotion for Summary Judgment and Denying Defendant-IRS' Motion for Summary Judgment filed 4/27/22 [Dckt 60]

[IRS] Order Denying Motion for Summary Judgment Filed by United States of America, Internal Revenue Service (Dckt. 17) filed 4/27/22 [Dckt 62]

[JGD-10] Order Granting Plaintiff-Debtor's Counter Motion for Summary Judgment and for Entry of Judgment Determining that the Federal Tax Obligation for the 2008 Tax Year Has Been Discharged filed 4/27/22 [Dckt 64]

<p>The Pre-Trial Conference is continued to 2:00 p.m. on August 24, 2022, for adversary administration tracking purposes.</p>
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MAY 4, 2022 STATUS CONFERENCE

On April 27, 2022, this court entered its order granting Plaintiff-Debtor's Motion for Summary Judgment on all claims in this Adversary Proceeding and for the entry of judgment pursuant thereto. Memorandum Opinion and Decision, and Order; Dckts. 60, 64.

The court continues the Pre-Trial Conference for adversary proceeding administrative purposes pending the entry of the judgment as ordered by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Pre-Trial Conference having been scheduled for May 4, 2022, in this Adversary Proceeding, the court having granted Plaintiff-Debtor's Motion for Summary Judgment and ordered entry of judgment for Plaintiff-Debtor in this Adversary Proceeding (Order, Dckt. 64), and good cause appearing,

IT IS ORDERED that the Pre-Trial Conference is continued to **2:00 p.m. on August 24, 2022**, for adversary proceeding administration tracking purposes.

6. [21-21424](#)-E-7 **ROBERT MOHR** **CONTINUED STATUS CONFERENCE**
[21-2073](#) **CAE-1** **RE: COMPLAINT**
HUSTED V. MOHR, JR. 10-14-21 [1]

ADVERSARY PROCEEDING
DISMISSED: 4/11/2022

Final Ruling: No appearance at the May 4, 2022 Status Conference is required.

Plaintiff's Atty: Barry H. Spitzer
Defendant's Atty: unknown

Adv. Filed: 10/14/21
Answer: 12/10/21

Nature of Action:
Recovery of money/property - preference

Notes:
[BHS-2] Order Dismissing Adversary Proceeding [with prejudice] filed 4/11/22 [Dckt 43]

The Adversary Proceeding having been dismissed, the Status Conference is concluded and removed from the Calendar.

The Clerk of the Court may close the file for this Adversary Proceeding.

7. [21-23841](#)-E-13 DENNIS FRAZIER
[22-2008](#) CAE-1
FIRST TRUST V. FRAZIER

STATUS CONFERENCE RE:
COMPLAINT
2-4-22 [\[1\]](#)

Final Ruling: No appearance at the May 4, 2022 Status Conference is required.

Plaintiff's Atty: Kirk Steven Rimmer
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 2/4/22
Answer: 2/25/22
Reissued Summons: 3/14/22

Nature of Action:
Dischargeability - false pretenses, false representations, actual fraud
Declaratory judgment

Notes:
Order Appointing Resolution Advocate and Assignment to the Bankruptcy Dispute Resolution Program
filed 4/8/22 [Dckt 17]

Defendant's Status Statement filed 4/27/22 [Dckt 20]

Defendant's Discovery Plan filed 4/27/22 [Dckt 21]

Defendant's Initial Disclosures filed 4/27/22 [Dckt 22]

Plaintiff's Fed. R. Civ. Procedure 26(a) Disclosures filed 4/27/22 [Dckt 23]

The Status Conference is continued to 2:00 p.m. on July 12, 2022, (Specially Set Day and Time to coincide with the continued hearing on the Motion to Confirm Plan), to allow the Parties to continue in their BRDP process and mutual efforts for their to be a confirmed plan in the related Chapter 13 case and this Adversary Proceeding resolved by mutual agreement.

SUMMARY OF COMPLAINT

The Complaint filed by First Trust ("Plaintiff"), Dckt. 1, asserts claims for the nondischargeability of debt. The asserted nondischargeable debt relates to monies advanced to Defendant-Debtor under an asserted agreement providing for a cure of the default in the obligation to the senior lien holder, further advances for the repair and maintenance of the related real property, and the sale of the

property for which the advances were made, with the proceeds of the sale used to repay the obligation of Defendant-Debtor to Plaintiff, and then for Plaintiff to share in the net sales proceeds after payment of the senior lien and sales costs. .

The dollar amounts of the advances are stated to be \$43,000.00, and the damages sought by Plaintiff are \$130,220.47.

SUMMARY OF ANSWER

Dennis Frazier (“Defendant-Debtor”) have filed an Answer, Dckt. 7, admitting and denying specific allegations in the Complaint.

CONTRACTUAL AGREEMENT AND POSSIBLE CROSS COMPLAINT

A copy of the contract upon which Plaintiff asserts its rights is not attached to the Complaint. Defendant-Debtor has not included it as an exhibit to the Answer. However, Plaintiff has included the contract and related documents as an attachment to its Proof of Claim filed in Defendant-Debtor’s bankruptcy case. 21-23841; POC 2-1.

The contract is titled “Foreclosure Cancellation Guaranty.” *Id.*, p. 10. It recites that Defendant-Debtor’s was in default on an obligation secured by real property, the property was in foreclosure, and that Plaintiff-Debtor would advance the monies to cure the default. It also includes terms for the real property to be sold within 50 days of February 11, 2020, and from the net proceeds Plaintiff to be repaid for the advances (with no interest) and the remaining net proceeds to be split 50/50 with Defendant-Debtor and Plaintiff entering into a “Joint Venture” with respect to the sale of the real property.

In connection with the Motion to Confirm the Plan in Defendant-Debtor’s bankruptcy case, Defendant-Debtor reports that if the BDRP process does not resolve the dispute with Plaintiff, then Defendant-Debtor will file a cross complaint in this Adversary Proceeding.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff First Trust alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I), (K). Complaint ¶¶ 3, 4, Dckt. 1. In the Answer, Defendant-Debtor admit the allegations of jurisdiction and that this is a core proceeding for the claims for relief stated in the Complaint. Answer ¶¶ 3, 4; Dckt. 7.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Status Conference for this Adversary Proceeding having been set for May 4, 2022; the court considering the appearances by these Parties in the related Bankruptcy Case and their reporting the ongoing BDRP proceedings to address this dispute, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on July 12, 2022**, (Specially Set Day and Time to coincide with the continued hearing on the Motion to Confirm Plan), to allow the Parties to continue in their BRDP process and mutual efforts for their to be a confirmed plan in the related Chapter 13 case and this Adversary Proceeding resolved by mutual agreement.

8. [18-20964-E-7](#) **BRADLEY GILBREATH**
[21-2084](#) CAE-1
HUSTED V. GILBREATH 12-2-21 [1]

**CONTINUED STATUS CONFERENCE
RE: COMPLAINT**

**ADVERSARY PROCEEDING CLOSED:
4/18/2022**

Final Ruling: No appearance at the May 4, 2022 Status Conference is required.

Plaintiff's Atty: Estela O. Pino; Ramandeep Kaur Mahal
Defendant's Atty: unknown

Adv. Filed: 12/2/21

Answer: none

Nature of Action:

Recovery of money/property - turnover of property

Notes:

[PA-1] Order granting Motion for Entry of Default Judgment filed 3/21/22 [Dckt 36]

[PA-1] Judgment filed 3/29/22 [Dckt 41]

Closed: 4/18/22

Judgment having been entered, the Status Conference is continued to 2:00 p.m. on August 24, 2022, for adversary proceeding post-judgment administrative tracking purposes.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Status Conference in this Adversary Proceeding having been set for May 4, 2022, Judgment having been entered on March 29, 2022, the post-judgment enforcement of the Judgment not being documented, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on August 24, 2022**, for adversary proceeding post-judgment administrative tracking purposes.